

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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M.D.,

Plaintiff,

**COMPLAINT**

-against-

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW  
YORK; a/k/a THE MOST REVEREND, EDWARD B.  
SCHARFENBERGER, as Bishop and Corporate Sole of the  
DIOCESE OF ALBANY; ST. TERESA OF AVILA parish, and  
ST. TERESA OF AVILA SCHOOL,

Index No. \_\_\_\_\_

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, M.D., by and through undersigned counsel, respectfully shows to this Court and  
alleges as follows:

**Introduction**

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-  
g. The Plaintiff, when he was a minor, was sexually assaulted by Eugene Hubert, a deceased  
custodian formerly employed at St. Teresa of Avila School in Albany, New York which was owned  
and operated by the Diocese of Albany.

**Parties, Jurisdiction and Venue**

1. Plaintiff, M.D., is a citizen and resident of the State of New York. Plaintiff brings  
this Complaint using his initials because of the sensitive nature of the allegations of child sexual  
abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment  
and further psychological damage if his identity as a victim of child sexual abuse were to become

publicly known. His identity will be made known to Defendant, at the latest, upon service of the Summons and Complaint.

2. Defendant, The Roman Catholic Diocese Of Albany, New York, and Edward B. Scharfenberger, as Bishop and Corporate Sole of the Diocese Of Albany (hereafter, the “Diocese” or the “Diocese of Albany”), is a religious institution and organization with principal offices located at 40 North Main Avenue, Albany, New York, 12203. The Diocese of Albany controls all Catholic religious, pastoral and educational functions in the counties of Albany, Columbia, Delaware, Fulton, Greene, southern Herkimer, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington, New York. The Diocese operates and controls approximately 129 parishes and 274 schools. The Diocese is a citizen and resident of the State of New York.

3. Defendant, St. Teresa of Avila parish, is former Catholic parish and church which was located in Albany, New York. The parish had a school, known as the St. Teresa of Avila School. (Hereafter the parish and school are collectively referred to as “St. Teresa” or the “School”). At all relevant times, St. Teresa was owned, controlled and operated by the Diocese of Albany.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

6. Venue of this action lies in Albany County as a substantial part of the events or omissions giving rise to the claim occurred in Albany County or one of the Defendants resides in Albany County.

**Facts of Sexual Abuse**

7. Plaintiff was born in 1963. At all relevant times, Plaintiff was a student at St. Teresa of Avila School in Albany, New York.

8. Eugene Hubert was an unmarried adult male who was employed as a maintenance worker by St. Teresa from approximately 1976-1979.

9. Eugene Hubert raped Plaintiff on multiple occasions in the basement at St. Teresa when Plaintiff was approximately 12 or 13 years old. The acts of sexual assault included sodomy, oral sex and the fondling of Plaintiff's genitals.

10. On one occasion, Hubert took Plaintiff to his home during school hours and sexually assaulted him.

11. At all relevant times, Hubert was a serial sexual predator who sexually assaulted multiple children at St. Teresa.

12. Hubert's sexual proclivities and inappropriate behavior was well known to the staff and administration at St. Teresa.

13. Hubert had been accused of sexually assaulting several other children prior to his period of employment at St. Teresa.

14. From approximately 1968-1971, Hubert was a priest with the Fr. Damien Seminary which is under the auspices and control of the Roman Catholic Diocese of Winona-Rochester, Minnesota. While in the seminary, Hubert was accused of sexually assaulting a 10 or 11 year old Cub Scout. Upon information and belief, this child's parent reported the sexual abuse to the Seminary and/or the Diocese of Winona-Rochester and Hubert was removed from his position. At least four other children allege they were sexually abused by Hubert while he was in the Seminary.

15. Upon information and belief, the Diocese of Albany was aware of Hubert's sexual abuse history at the Minnesota seminary, or in the exercise of reasonable care, should have know

of Hubert's sexual abuse history. Despite this notice, the Diocese of Albany hired Hubert and granted him unsupervised, unfettered access to children at St. Teresa.

16. At all relevant times, the Defendants knew or in the exercise of reasonable care should have known that Hubert had a propensity for the conduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

17. At all relevant times, it was reasonably foreseeable to the Defendants that Hubert would commit acts of child sexual abuse or assault on a child.

18. At all relevant times, the Defendants knew or should have known that Hubert was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to their counsel, care and/or protection.

19. With such actual or constructive knowledge, the Defendants provided Hubert unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of child sexual abuse or assault.

#### **Nature of Conduct Alleged**

20. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

21. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety

of others, including Plaintiff, or knowingly or intentionally, in concert with Hubert, to retain Hubert with unfettered access to children.

**COUNT I**  
**NEGLIGENCE**  
(against St. Teresa of Avila)

22. Plaintiff repeats and realleges Paragraphs 1 through 21 above.

23. At all material times, St. Teresa and Plaintiff were in a special relationship of church-parishioner in which St. Teresa's Home owed Plaintiff a duty of reasonable care.

24. At all material times, St. Teresa and Hubert were in a special relationship of employer – employee, in which St. Teresa owed a duty to control the acts and conduct of Hubert to prevent foreseeable harm.

25. St. Teresa owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of St. Teresa. St. Teresa duties encompassed the, hiring, retention and supervision of Hubert and otherwise providing a safe environment for Plaintiff.

26. St. Teresa's breached these duties by failing to protect the minor M.D. from sexual assault and lewd and lascivious acts committed by agents and employees of St. Teresa.

27. At all relevant times, St. Teresa created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

28. At all relevant times St. Teresa had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

29. As a direct and proximate result of St. Teresa's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

30. St. Teresa's acts and conduct shows a reckless or willful disregard for the safety and well-being of M.D.

WHEREFORE, Plaintiff demands judgment against St. Teresa of Avila for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

**COUNT II**  
**NEGLIGENCE**  
(against the Diocese of Albany)

31. Plaintiff repeats and realleges Paragraphs 1 through 21 above.

32. At all material times the Diocese, as principal, and St. Teresa, as agent, were in an agency relationship, such that the St. Teresa acted on the Diocese's behalf, in accordance with the Diocese's instructions and directions on all matters, including those relating to personnel. The acts and omissions of St. Teresa were subject to the Diocese's plenary control, and St. Teresa consented to act subject to the Diocese's control.

33. At all material times, the Diocese and Plaintiff were in a special relationship in which the Diocese owed Plaintiff a duty of reasonable care.

34. At all material times, the Diocese and Hubert were in a special relationship of employer – employee, in which the Diocese owed a duty to control the acts and conduct of Hubert to prevent foreseeable harm.

35. The Diocese owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Diocese. The Diocese's duties encompassed the hiring, retention and supervision of Hubert and otherwise providing a safe environment for Plaintiff.

36. The Diocese breached these duties by failing to protect the minor M.D. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Diocese.

37. At all relevant times, the Diocese created an environment which fostered child

sexual abuse against children it had a duty to protect, including Plaintiff.

38. At all relevant times, the Diocese had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

39. As a direct and proximate result of the Diocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

40. The Diocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of M.D.

WHEREFORE, Plaintiff demands judgment against the Diocese of Albany for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial in this action.

Dated: New York, New York  
August 14, 2019

Respectfully submitted,

HERMAN LAW  
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By: \_\_\_\_\_

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